

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VIRGINIA**

UNITED STATES OF AMERICA	:	
v.	:	
	:	Criminal No. 1:13-cr-460
ABDUL RAZAQ	:	
Defendant	:	

**DEFENDANT’S RESPONSE TO REVISED PRE-SENTENCING REPORT AND
REPLY TO GOVERNMENT’S SENTENCING MEMORANDUM**

Defendant, Abdul Razaq (“Dr. Razaq”), by and through his counsel, William C. Brennan, Jr., and Robert Jenkins, respectfully submits this response to the Revised Pre-Sentence Report and Reply to the Government’s Sentencing Memorandum.

Sophisticated Means:

Dr. Razaq objects to the enhancement for sophisticated means pursuant to USSG

§2T1.1(b)(2). The Application Note for that guideline states at Note 5:

For the purposes of subsection (b)(2), ‘sophisticated means’ means *especially complex or especially intricate offense conduct* pertaining to the execution or concealment of an offense. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts ordinarily indicates sophisticated means. (Emphasis added.)

USSG §2T1.1, comment. (n.5)

The lead case in the Fourth Circuit concerning this enhancement is *United States v.*

Jinwright, 683 F.3d 471 (4th Cir. 2012). There the Court made the important observation that:

The enhancement requires some means of execution that separates the offense before us from the ordinary or generic. As the Seventh Circuit has explained, the “average criminal tax fraud ... involves some concealment; ‘sophisticated’ tax fraud must require more.” *United States v. Kontny*, 238 F.3d 815, 820-21 (7th Cir. 2001)

Jinwright, at 486.

The Court in *Jinwright* went on to list the factors that made the conduct in that case “sophisticated.”

1. The Jinwrights’ scheme spanned many years and involved multiple organizations.
2. The Jinwrights employed a variety of sophisticated techniques to conceal their tax evasion.
3. The Jinwrights structured their compensation so as to prevent the inclusion of income on their W-2 forms.
4. The Jinwrights drew payments from the operating account rather than the payroll account.
5. The Jinwrights disguised wages as allowances and reimbursements for which they were not issued 1099’s.
6. The Jinwrights directed employees to manipulate financial records to conceal income.
7. The Jinwrights misrepresented their financial situation to the IRS in an application for tax exempt status.
8. A Jinwrights entity provided an elaborate way to conceal income through a kickback scheme.
9. The Jinwrights’ willfully omitted more than \$3 million in taxable income causing a tax loss of approximately \$1.3 million.

Jinwright, at 486 – 87.

In the instant case Dr. Razaq simply took deductions from his tax return to which he was not entitled because he had been reimbursed for the amount of the deductions. He did not hide assets; he did not use fictitious entities, corporate shells or offshore accounts. His conduct did

not involve multiple organizations, false W-2's, incorrect 1099's, manipulation of business financial records or elaborate kickbacks. Most importantly the tax loss was less than \$12,500. Dr. Razaq's conduct involved "some concealment" but was not "especially complex or intricate."

Based upon the Application Note to USSG §2T1.1(b)(2) and *United States v. Jinwright*, 683 F.3d 471 (4th Cir. 2012) the two level enhancement for sophisticated means should not apply in this case. Thus, Dr. Razaq believes that the Offense Level should be 10 with a Total Offense Level of 8 (after a 2 level reduction for Acceptance of Responsibility). That would result in a recommended guideline range of 0 – 6 months in Zone A.

Date: July 30, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of July, 2014 a true and accurate copy of the foregoing Defendant's Response to Revised Pre-Sentencing Report and Government's Sentencing Memorandum filed via the CM/ECF filing system, and notice of such filing was served upon Assistant United States Attorney Gordon D. Kromberg and all parties of record.

/s/
William C. Brennan, Jr.